



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JUL 06 2016

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Waiver Pursuant to 18 U.S.C. § 208(b)(1)

FROM: Kevin S. Minoli *K S Minoli*
Principal Deputy General Counsel and
Designated Agency Ethics Official

TO: Jennifer Orme Zavaleta, Director
National Exposure Research Laboratory
Office of Research and Development

I understand that the Administrator of the U.S. Environmental Protection Agency ("EPA"), through her designee, the Acting Assistant Administrator for International and Tribal Affairs, has appointed you to serve in your official Government capacity as the United States representative to the Board of Directors of the Regional Environmental Center (REC) for Central and Eastern Europe.

The REC is a non-partisan, non-advocacy, not-for-profit international organization established in 1990 by the United States, Hungary and the European Commission to provide robust environmental technical assistance to Eastern Europe. Pursuant to the Support for East European Democracy ("SEED") Act of 1989, Pub. L. 101-179 (codified, as amended, at 22 U.S.C. § 5401, *et seq.*), the United States provides political and financial support to promote democratic and free market transitions in the former communist countries of Central and Eastern Europe. The SEED Act at Section 502 provides that the EPA Administrator undertake "educational, policy training, research, and technical and financial assistance, monitoring, coordinating, and other activities as the Administrator may deem appropriate, either alone or in cooperation with other United States or foreign agencies, governments, or public or private institutions, in protecting the environment in [the eastern European zone]." 22 U.S.C. § 5452(b).

Established under a charter featuring over thirty signatories, the REC, based in Szentendre, Hungary, operates a network of offices in seventeen countries.¹ Through its Board of Directors, which is responsible for broad policy decisions and oversight of day-to-day management, the REC carries out the mission of the SEED Act. Your selection marks the first

¹ The seventeen countries are Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Kosovo, Latvia, the former Yugoslav Republic of Macedonia, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia, and Turkey.

time that an EPA representative has been appointed to serve on the REC Board. As an officer or employee of the executive branch, you are prohibited from participating personally and substantially in an official capacity in particular matters in which you have a personal financial interest or in which you have an imputed interest under 18 U.S.C. § 208.

Specifically, the statute states:

Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, . . . participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be subject to the penalties set forth in section 216 of this title.

As a member of the REC Board, the financial interests of the organization will be imputed to you. The Department of Justice's Office of Legal Counsel ("OLC") has determined that a U.S. government employee may not serve as an *ex-officio* board member of a non-federal organization in the absence of express statutory authority or a waiver of the prohibition outlined in 18 U.S.C. § 208(a). OLC has not issued a formal opinion regarding whether the SEED Act provides specific statutory for placing an EPA employee on the REC Board of Directors.

18 U.S.C. § 208 provides for the possibility of obtaining a waiver of the requirements of the provision:

(1) if the officer or employee first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee;

You seek a waiver under this provision.

I have determined that your disqualifying financial interest in the REC is not so substantial as to affect the integrity of the services that the EPA and the Federal Government expect from you. The EPA Administrator, through her designee, who is authorized to make

determinations about how to cooperate with public and private institutions to protect this region's environmental interests, has appointed you to serve as the representative of the United States on the Board. The State Department concurs in your selection. You will be serving in your official Government capacity and under the ultimate supervision of EPA. Your duties as a Board Member will be carried out in furtherance of the interests of the United States. Therefore, I am granting you an individual waiver pursuant to 18 U.S.C. § 208(b)(1), subject to the limitations set forth below, to allow you to serve, in your official Government capacity, as a member of the REC Board. Your appointing official concurs in this determination.

Please note that this waiver contains certain necessary limitations:

1. You are not permitted to request funds from the United States government or permitted to award any federal funds to the REC. This prohibition does not extend to seeking or discussing funding from the foreign governmental entities;
2. Other than as a board member, you may not participate in any particular matter that will have a direct and predictable effect upon the REC; and
3. You may not lobby Congress on behalf of the REC or indirectly lobby on its behalf before any department, agency, officer or employee of the United States.

This waiver only applies to your imputed interests in the REC. It does not otherwise allow you to participate in any particular matter that will have a direct and predictable effect on your financial interests or other financial interests imputed to you.

In accordance with 5 C.F.R. § 2640.303, I have consulted with the U.S. Office of Government Ethics prior to granting this waiver and a signed, final copy of this waiver will be forwarded to that Office.

Pursuant to 5 C.F.R. § 2640.304, a copy of this waiver will be made available upon request to the public in accordance with the procedures described in 5 C.F.R. § 2634.603. In making this waiver publicly available, certain information may be withheld in accordance with 5 C.F.R. § 2640.304(b).

Please feel free to contact me or Justina Fugh, Senior Counsel for Ethics, if you have any questions. Justina can be reached at (202) 564-1786.

cc: Justina Fugh, Senior Counsel for Ethics
Jane Nishida, Acting Assistant Administrator for International and Tribal Affairs
Lek Kadeli, Principal Deputy Assistant Administrator for Research and Development